

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT BUKOBA

MISC. LAND CASE APPEAL NO. 34/2015

(From the Decision of the District Land and Housing Tribunal of Kagera District at Bukoba in Land Case Appeal No. 238 of 2014 and Original from ward tribunal of Karabagaine ward in Application No. 12 of 2014)

YULITHER PROTACE.....APPELLANT

VERSUS

FURANSIS LAURENT.....RESPONDENT

JUDGMENT

25/4 & 10/5 2018

Rumanyika, J

The appeal is against ruling and order dated 12/02/2015. Whereby the District Land and Housing Tribunal- Bukoba (The DLHT) refused Yulither Protace (the appellant) extension of time within which to appeal against the 31/07/2014 judgment and decree of the Karabagaine Ward (The trial tribunal)

There were five (5) grounds of appeal. Which essentially would boil down to only 2 and rephrased as hereunder:-

1. That the DLHT erred in law and in fact not holding that late supply by the trial tribunal of copy of the requisite impugned judgment was ground for extension of time.

2. That the DLHT erred in fact holding that it was both mandatory and easy for the trial tribunal's secretary by affidavit to commit itself for the appellant's delay.

It is imperative from the very outset to state that by powers of attorney, Ms. Consolatha Protas Gavana (daughter of the appellant) appeared. Whereas the respondent now was proven as having refused service, I ordered dispensation of his appearance (pursuant to my 25/04/2018 order).

In his brief, but in my considered view a well reasoned ruling, the chair to the DLHT in his words said: I quote him in part (page 2).

“. . . the applicant's allegations are not supported by any evidence, the applicant did not produce any document or letter to request for a copy of a judgment as a proof that she was striving to obtain a copy of the judgment at the ward tribunal The allegation by the applicant are only mere words I am in agreement with the respondent, that the applicant was only moved by the application for execution. . . . on 24/09/2014. This instant application was filed on 17/10/2014 . . . the applicants move is only calculated to delay justice and to circumvent the wheels of execution . . . the applicant has failed to adduce good and sufficient reasons for the application. I accordingly disallow the application with costs."

Whereas, in effect the appellant in her supporting but respectfully vague affidavit solely complained over later supply to her of copy of the impugned trial tribunal's judgment:

"2. That, the delay in filing my appeal in time was caused by the ward tribunal to delay to give me a copy of judgment in time it is when I have been advised to file this application, in his counter affidavit of 13/04/2015 the respondent is on record to have deponed"

. . . . The applicant has neglected to pursue her right of appealing to the higher tribunal and the application cannot be entertained (Para 5). Leave alone his submission during hearing of the application:-

" . . . after two days I did go to the tribunal and I managed to get the copy of the judgment . . . the applicant was only prompted with the execution . . . upon seeing the summons.

. . . , the applicant rushed and filed the application for leave to appeal out of time . . . ?"

Now the issue and therefore the bottom line is whether the applicant had furnished sufficient reasons or good cause. In that why he should be given more time and the most persuasive reason that he can show is that the delay had not been of his own making (See the old case of **Shanti V. Shindocha & others [1973] E.A 207**. The issue is answered in the negative for one main reason; **one**, the applicant in her affidavit did not state when exactly for the first time applied for the copy and, if at all when he followed up the matter, if anything, what was his 2nd, 3rd or 4th remainders. It is therefore doubtful if for instance she was not, upon requesting at once been supplied with the copy. In order to avoid the would be endless civil litigation, and as much as copies of judgment, ruling, orders etc were supplied upon request and payment by parties of the requisite court fees, whoever applied for extension of time to take a

necessary step should always state it clearly in the supporting affidavit among others; **when he applied for and obtained the requisite copies.** (was that one basis of the complaint). Short of which he will be considered as having failed to discharge duty of accounting for each day of the delay. This one also the appellant should have observed. But very unfortunately didn't. The devoid of merits appeal is hereby dismissed with costs.

Right of appeal explained.



S.M. Rumanyika, J
25/04/ 2018

Delivered under my hand and seal of the court in court. This 10/05/2018 in the presence of the appellant only.

S.M. Rumanyika, J
10/05/ 2018